

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Jonathan Turner,

File No. 23-cv-559 (ECT/ECW)

Petitioner,

v.

ORDER

Tracy Beltz, *warden of MCF Faribault*, and
Keith Ellison, *Attorney General of the State
of Minnesota*,

Respondents.

Petitioner Jonathan Turner commenced this action pro se by filing a petition for a writ of habeas corpus. Pet. [ECF No. 1]. Turner subsequently filed an application to proceed in forma pauperis (“IFP”). ECF No. 11. The case is before the Court on a Report and Recommendation [ECF No. 14] issued by Magistrate Judge Elizabeth Cowan Wright. Magistrate Judge Wright recommends dismissing Turner’s petition and denying his IFP application. R&R at 5. Turner filed objections to the Report and Recommendation. ECF No. 15. Respondent Tracy Beltz did not file a substantive response to Turner’s objection. ECF No. 16. Respondent Keith Ellison filed no response. Because Turner has objected, the Court is required to review the Report and Recommendation de novo pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b)(3). The Court has undertaken that de novo review and concludes that Magistrate Judge Wright’s analysis and conclusions are correct. Though the R&R did not specify whether dismissal would be with or without prejudice, the dismissal will be with prejudice because “untimeliness is a procedural hurdle that may

never be overcome by the prisoner, and therefore a dismissal for untimeliness constitutes a disposition on the merits.” *See United States v. Munoz*, 198 F. Supp. 3d 1040, 1045 (D. Minn. 2016) (citing cases).

Therefore, based upon all of the files, records, and proceedings in the above-captioned matter, **IT IS ORDERED THAT:**

1. The Objections to the Report and Recommendation [ECF No. 15] are **OVERRULED**;
2. The Report and Recommendation [ECF No. 14] is **ACCEPTED** in full;
3. The petition for writ of habeas corpus [ECF No. 1] is **DISMISSED WITH PREJUDICE**;
4. Petitioner’s IFP application [ECF No. 11] is **DENIED**; and
5. No certificate of appealability shall issue.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 6, 2023

s/ Eric C. Tostrud

Eric C. Tostrud

United States District Court